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Fast Track Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC30-40-10
Regulation title	Eligibility Conditions and Requirements
Action title	Social Security Number Data Match for Verification of Citizenship and Identity
Date this document prepared	December 4, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This regulatory action will serve to adopt an option offered to states under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Section 211 of CHIPRA provides an option to adopt an alternative process for verification of citizenship and identity for Medicaid.

The Deficit Reduction Act of 2005 (DRA), signed into law on February 8, 2006, first mandated that applicants for and recipients of Medicaid who declare to be United States citizens provide documentation of their citizenship and identity. This provision of the DRA became effective on July 1, 2006, and was implemented in Virginia on that date. Prior to implementation of this requirement, individuals who applied for or received Medicaid could self-declare their United States citizenship, but were not required to provide documentation to support the declaration. Regulations promulgated by the Centers for Medicare and Medicaid Services (CMS) took the verification requirement one step further by mandating that only original documentation could be accepted to verify an individual's citizenship and identity; copies of original documents could not be accepted.

The requirement to provide original documentation served to be a barrier to enrollment in the Medicaid program. Many applicants and recipients had copies of documents, but did not have original documentation. Payment for original documents and the length of time it took to receive out of state documentation became an issue and resulted in some applications for Medicaid being denied due to failure to provide necessary verification.

CHIPRA of 2009 offers states a new option to assist Medicaid applicants and recipients in the verification process. Section 211 of CHIPRA gives states the ability to enter into a data match with the Social Security Administration to verify the citizenship and identity of Medicaid applicants and recipients who claim to be United States citizens. Because provision of a Social Security number is already a condition of eligibility for Medicaid, adoption of this option will remove a barrier to enrollment and will result in a more seamless application process for most Medicaid applicants and recipients. Additionally, adoption of this option should result in workload reduction for most local department of social services eligibility workers as they will no longer be required to request original documentation and provide the follow up that has been needed to get the necessary information.

This change affects no difference in the number of persons who are found to be eligible in these groups.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background document with the attached amended State Plan pages, General Conditions of Eligibility (12VAC 30-40-10), and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the *Code of Virginia* § 2.2-4012, of the Administrative Process Act. I hereby certify that these regulations are full, true, and correctly dated.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to promulgate State Plan regulations to adopt the option offered under CHIPRA of 2009 to establish a data match with the Social Security Administration to verify United States' citizenship and identity through the use of the individual's Social Security number. Adoption of this option will result in the implementation of an electronic data match with the Social Security Administration and reduce the number of individuals who will need to provide original documentation of United States citizenship and identity. This change will protect the health, safety, and welfare of the citizens of the Commonwealth by streamlining the application documentation and verification process, thus improving Medicaid enrollment timeliness and workload reduction for most local department of social services eligibility workers.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track process is being utilized to promulgate this change in regulatory language as it is expected to be a non-controversial amendment to existing regulations. Existing regulations currently require an applicant for or recipient of Medicaid to verify citizenship and identity with original documentation. This action will serve to provide a way to meet this requirement electronically without the individual applicant having to provide original documentation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The section of the State Plan for Medical Assistance that is affected by this action is Attachment 2.6-A Eligibility Conditions and Requirements (12VAC 30-40-10).

This regulatory action will serve to adopt an option offered to states under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Section 211 of CHIPRA provides an option to adopt an alternative process for verification of citizenship and identity for Medicaid.

The DRA, signed into law on February 8, 2006, first mandated that applicants for and recipients of Medicaid who claim to be United States citizens provide documentation of their United States citizenship and identity. This provision of the DRA became effective on July 1, 2006, and was implemented in Virginia on that date. Prior to implementation of this requirement, individuals who applied for or received Medicaid could self-declare their United States citizenship, but were not required to provide documentation to support the declaration. Regulations promulgated by the CMS took the requirement to verify one step further by mandating that only original documentation could be accepted to verify an individual's citizenship and identity; copies of original documents could not be accepted.

The requirement to provide original documentation served to be a barrier to enrollment in the Medicaid program. Many applicants and recipients had copies of documents, but did not have original documentation. Payment for original documents and the length of time it took to receive out of state documentation became an issue and resulted in some applications for Medicaid being denied due to failure to provide this necessary verification.

CHIPRA of 2009 offers states a new option to assist Medicaid applicants and recipients in the verification process. Section 211 of CHIPRA gives states the ability to enter into a data match with the Social Security Administration to verify the citizenship and identity of Medicaid applicants and recipients who claim to be United States citizens. Because provision of a Social Security number is already a condition of eligibility for Medicaid, adoption of this option will streamline the eligibility process and thereby creating a seamless process for most Medicaid applicants and recipients. Additionally, adoption of this option should result in workload reduction for most local department of social services eligibility workers as they will no longer be required to request original documentation and provide the follow up that has been needed to get the necessary documentation.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

There is no disadvantage to the public or the Commonwealth with the adoption of this regulation. Adoption of this regulation will result in the Medicaid program being able to electronically verify the United States' citizenship and identity of Medicaid applicants and recipients rather than requiring them to provide original documentation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this proposal that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by this change as implementation is statewide.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum:

- 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There is no adverse impact on small business and no other alternative regulatory methods to accomplish the objectives.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Projected cost total for FY 2010 is \$249,000 (\$24,900 GF; \$224,100 NGF). These costs represent a one-time expenditure for required computer system changes.
Projected cost of the regulation on localities	Costs that local departments of social services eligibility workers are now incurring as a consequence of the current policy will be alleviated.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Applicants for and recipients of medical assistance will no longer have to incur the expense of obtaining original documentation of their U.S. citizenship.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives to this proposal. Absent adoption of this proposal, applicants for and recipients of Medicaid will continue to be required to provide original documentation of United States citizenship and identity. Persons who could otherwise be found eligible for medical assistance could be determined as not eligible due to such expenses and paperwork delays.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-40-10		Applicants and recipients who claim to be United States citizens must provide satisfactory evidence of United States citizenship and identity	Add to the requirement by stating that the evidence will be required unless citizenship and identity has been verified by the Commissioner of Social Security or the individual is otherwise exempt from this requirement.